

PUBLIC MATTER

ORIGINAL

THE STATE BAR OF CALIFORNIA
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FILED

JAN 22 2008

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No. 06-O-15021
DONALD A. BROOKS,)
No. 212949,) NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE

1 **BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE**
2 **ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE**
3 **ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON**
4 **PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH**
5 **CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS**
6 **APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE**
7 **BAR COURT PROCEEDINGS.**

8 The State Bar of California alleges:

9 **JURISDICTION**

10 1. Donald A. Brooks ("Respondent") was admitted to the practice of law in the State of
11 California on May 30, 2001, was a member at all times pertinent to these charges, and is
12 currently a member of the State Bar of California.

13 **COUNT ONE**

14 Case No. 06-O-15021
15 Rules of Professional Conduct, rule 3-110(A)
16 [Failure to Perform with Competence]

17 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
18 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
19 follows:

20 3. On or about April 28, 2005, Jose Alfaro ("Alfaro") filed a complaint alleging breach
21 of contract by Zulis Ruiz ("Ruiz") in the Superior Court of California, County of Orange, titled
22 *Jose Alfaro and Emma Alfaro v. Zulis Ruiz and ZDW Decoration, Inc.*, Case No. 05CC05681
23 (*"Alfaro v. Ruiz"*).

24 4. In or about June or July of 2005, Ruiz was served with the complaint in *Alfaro v. Ruiz*.

25 5. In or about June or July of 2005, Ruiz decided to obtain a loan on residential property
26 that she owned to settle *Alfaro v. Ruiz*.

27 6. In or about July or August of 2005, Ruiz contacted a mortgage broker, Wesley
28 McDowell ("McDowell"), to obtain a loan of approximately \$85,000. McDowell told Ruiz that
29 he would be able to secure a loan to her, but recommended that she hire McDowell's cousin,
30 Respondent, to represent her in and settle *Alfaro v. Ruiz*.

1 7. In or about July of 2005, Ruiz hired Respondent to represent her in *Alfaro v. Ruiz*.
2 Respondent requested advanced fees and costs of \$5,000 to represent Ruiz, which Ruiz paid
3 Respondent.

4 8. After being hired by Ruiz, Respondent did not file an answer or appear in *Alfaro v.*
5 *Ruiz*.

6 9. On or about August 17, 2005, Alfaro's counsel filed a Request for Entry of Default in
7 *Alfaro v. Ruiz*, which was subsequently entered and a default judgment for \$61,944.50 was
8 entered on or about October 6, 2005.

9 10. Respondent did not oppose the Request for Entry of Default in *Alfaro v. Ruiz*.

10 11. After the default and default judgment for \$61,944.50 were entered, Respondent did
11 not seek to set aside the entry of the default in *Alfaro v. Ruiz*, nor did Respondent inform Ruiz
12 that the default and default judgment had been entered.

13 12. In or about January of 2006, Ruiz learned that Maria Hernandez ("Hernandez")
14 intended to sue her for breach of contract. Ruiz hired Respondent to negotiate a settlement of
15 Hernandez's breach of contract claim prior to the filing of a lawsuit. Ruiz agreed to pay
16 Respondent an additional \$2,000 to represent Ruiz in the Hernandez matter.

17 13. In or about January or February of 2006, Ruiz paid Respondent \$1,000 of the
18 additional \$2,000 for advanced attorney's fees and costs in the Hernandez matter.

19 14. In or about February of 2006, Ruiz paid Respondent \$400 of the additional \$2,000
20 for advanced attorney's fees and costs in the Hernandez matter by depositing that amount in a
21 bank account specified by Respondent at a branch of Bank of America. Altogether, Ruiz paid
22 Respondent \$6,400 to represent her in the Alfaro and Hernandez matters.

23 15. Respondent took no action to negotiate a settlement of Hernandez's claims.

24 16. On or about April 3, 2006, Hernandez filed a lawsuit against Ruiz in the Superior
25 Court of California, County of Los Angeles, titled *Maria Hernandez v. Zulis Ruiz*, Case No.
26 KC048115 ("*Hernandez v. Ruiz*").

1 17. By failing to: file an answer to the complaint, respond to the request for entry of
2 default, or seek relief from the entry of default in *Alfaro v. Ruiz*; and take any action to negotiate
3 a settlement of Hernandez's claim prior to the filing of the complaint in *Hernandez v. Ruiz*,
4 Respondent intentionally, recklessly, or repeatedly failed to perform legal services with
5 competence.

6 **COUNT TWO**

7 Case No. 06-O-15021
8 Business and Professions Code section 6068(m)
[Failure to Inform Client of Significant Development]

9 18. Respondent wilfully violated Business and Professions Code section 6068(m), by
10 failing to keep a client reasonably informed of significant developments in a matter in which
11 Respondent had agreed to provide legal services, as follows:

12 19. The allegations of paragraphs 3 through 16 are incorporated by reference.

13 20. By failing to inform Ruiz that a default and default judgment for \$61,944.50 had
14 been entered in *Alfaro v. Ruiz*, Respondent wilfully failed to keep a client reasonably informed
15 of significant developments in a matter in which Respondent had agreed to provide legal
16 services.

17 **COUNT THREE**

18 Case No. 06-O-15021
19 Business and Professions Code section 6106
[Moral Turpitude - Misrepresentation to the Client]

20 21. Respondent wilfully violated Business and Professions Code, section 6106, by
21 committing an act involving moral turpitude, dishonesty or corruption, as follows:

22 22. The allegations of paragraphs 3 through 16 are incorporated by reference.

23 23. Between in or about January of 2006 and in or about March of 2006, Respondent
24 told Ruiz on approximately four occasions that she had to send the anticipated loan of \$85,000 to
25 a third party in order to prevent Ruiz from being criminally convicted of fraud and going to jail
26 for a very long time. Respondent told Ruiz to instruct the lender, Southland Title, to send the
27 \$85,000 to Skenos Holdings, LLC ("Skenos"), and to instruct Skenos to transfer the \$85,000 to
28 Respondent.

24. In or about March of 2006, Ruiz refinanced the residential property that she owned and obtained a loan of \$85,000 from Southland Title (the “\$85,000”). As instructed by Respondent, Ruiz instructed Southland Title to send the \$85,000 to Skenos and instructed Skenos to transfer the \$85,000 to Respondent.

25. At the times that Respondent told Ruiz that she had to send the anticipated loan to a third party to prevent Ruiz from being criminally convicted of fraud and going to jail for a very long time, that statement was false, and Respondent knew or was grossly negligent in not knowing that the statement was false.

26. By telling Ruiz that she had to send the \$85,000 to a third party to prevent her from being criminally convicted of fraud and going to jail for a very long time, when he knew or was grossly negligent in not knowing that the statement was false, Respondent willfully committed an act involving moral turpitude, dishonesty, or corruption.

COUNT FOUR

Case No. 06-O-15021
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

27. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account” or words of similar import, as follows:

28. The allegations of paragraphs 3 through 16 and 23 through 25 are incorporated by reference.

29. Between in or about February of 2006 and in or about April of 2007, Respondent maintained an account titled “Donald A. Brooks, Attorney at Law [¶] Attorney Client Trust Account,” and designated account number 16648-05180 (“CTA”), at the Bank of America.

30. On or about March 21, 2006, Southland Title caused the \$85,000 to be electronically transferred to Skenos.

31. On or about March 23, 2006, Skenos issued check no. 1043 from the First National Bank of Wyoming, Account No. 107000233, to the "Law Offices of Donald A. Brooks" for the \$85,000. The check bore the memo, "In the matter of Ruiz ZDW Construction."

32. On or about March 27, 2006, Respondent deposited the check from Skenos for the \$85,000 into his CTA. After depositing the \$85,000 into his CTA, the balance in the CTA was \$88,540.15.

33. On or about March 27, 2006, Ruiz called and spoke with Respondent. Respondent told Ruiz that he had received the \$85,000 from Skenos. Ruiz told Respondent to negotiate a settlement with Hernandez for the \$51,000 that Hernandez's attorney had demanded in a letter to Ruiz and to pay the remainder to her. Ruiz also told Respondent that she would try to raise additional funds to settle Alfaro's judgment for \$62,000. Respondent recommended that he contact Alfaro's attorney and attempt to settle Alfaro's default judgment for a lesser amount. Ruiz told Respondent that she agreed with his recommendation and to try to settle with Alfaro's attorney.

34. Between on or about March 27, 2006 and on or about April 28, 2006, the balance in Respondent's CTA fell below \$85,000 on repeated dates, including but not limited to the following:

DATE	BALANCE
April 12, 2006	\$81,281.30
April 13, 2006	\$81,181.30
April 14, 2006	\$81,056.30
April 17, 2006	\$556.30
April 18, 2006	\$700.40
April 20, 2006	\$630.40
April 24, 2006	\$430.40
April 26, 2006	\$130.40
April 28, 2006	\$10.54

35. Between on or about March 27, 2006 and on or about April 29, 2006, Respondent did not make any disbursements to or on behalf of Ruiz.

36. By not maintaining at least \$85,000 received on behalf of Ruiz in his CTA, Respondent wilfully failed to maintain client funds in a trust account.

COUNT FIVE

Case No. 06-O-15021
Business and Professions Code section 6106
[Moral Turpitude - Misappropriation]

37. Respondent wilfully violated Business and Professions Code section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

38. The allegations of paragraphs 3 through 16, 23 through 25, and 29 through 35 are incorporated by reference.

39. Respondent dishonestly or with gross negligence misappropriated for personal use \$84,989.46 of the \$85,000 belonging to Ruiz.

40. By misappropriating \$84,989.46 of the \$85,000 belonging to Ruiz, Respondent committed an act involving moral turpitude, dishonesty or corruption.

COUNT SIX

Case No. 06-O-15021
Business and Professions Code section 6106
[Moral Turpitude - Misrepresentation to the Client]

41. Respondent wilfully violated Business and Professions Code section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

42. The allegations of paragraphs 3 through 16, 23 through 25, and 29 through 35 are incorporated by reference.

43. In or about February of 2006, Ruiz met with Respondent at Respondent's home located at 817 Master Way, Beaumont, California 92223 (the "Home address"). Respondent told Ruiz that he was still litigating *Alfaro v. Ruiz*. Thereafter, they discussed the status of the Alfaro matter, the anticipated lawsuit from Hernandez, and the amounts that would be offered to settle the Alfaro and Hernandez matters from the anticipated loan of \$85,000.

44. At the time that Respondent told Ruiz that he was still litigating the Alfaro matter, that statement was false, and Respondent knew or was grossly negligent in not knowing that the statement was false.

45. In or about the first week of April of 2006, Ruiz spoke with Respondent who told her that: he had negotiated settlements with Alfaro and Hernandez; Alfaro would dismiss the lawsuit against her; and Hernandez would not file a lawsuit against her. These statements were false.

46. At the time that Respondent told Ruiz that: he had negotiated settlements with Alfaro and Hernandez; Alfaro would dismiss the lawsuit against her; and Hernandez would not file a lawsuit against her, Respondent knew or was grossly negligent in not knowing that the statements were false.

47. By telling Ruiz, that he was still litigating *Alfaro v. Ruiz* in or about February of 2006, and that he had negotiated settlements with Alfaro and Hernandez, that Alfaro would dismiss the lawsuit against her, and that Hernandez would not file a lawsuit against her in or about the first week of April of 2006, when he knew or was grossly negligent in not knowing that the statements were false, Respondent willfully committed acts involving moral turpitude, dishonesty, or corruption.

COUNT SEVEN

Case No. 06-O-15021
Business and Professions Code section 6068(m)
[Failure to Respond to Client Inquiries]

48. Respondent wilfully violated Business and Professions Code section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, as follows:

49. The allegations of paragraphs 3 through 16, 23 through 25, 29 through 35, and 43 through 46 are incorporated by reference.

50. In or about the mid of April of 2006, Ruiz learned that Hernandez had filed *Hernandez v. Ruiz*.

51. Between in or about the mid of April of 2006 and on or about May 4, 2006, Ruiz called Respondent's office on seven or eight occasions to obtain a status report on the settlement of the Alfaro and Hernandez matters. Ruiz was unable to speak with Respondent and left messages on his telephone voice message system requesting that he call her and provide a status report. Respondent received the messages.

52. Respondent did not respond to the messages or otherwise communicate with Ruiz.

53. By failing to provide a status report in response to the seven or eight messages left by Ruiz requesting one between in or about the mid of April of 2006 and on or about May 4, 2006, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client.

COUNT EIGHT

Case No. 06-O-15021
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

54. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

55. The allegations of paragraphs 3 through 16, 23 through 25, 29 through 35, 43 through 46, and 50 through 52 are incorporated by reference.

56. On or about May 4, 2006, Ruiz faxed a letter to Respondent at the facsimile number associated with his then official member ship address, 1222 S. Magnolia #105-396, Corona, California 92881 (the “Corona address”), informing him that she had learned that he had misrepresented that: he had negotiated settlements with Alfaro and Hernandez; Alfaro would dismiss the lawsuit against her; and Hernandez would not file a lawsuit against her. Ruiz informed Respondent that she had hired attorney Renée L. Campbell, Esq. (“Campbell”) to represent her, and directed Respondent to send a check for the \$85,000 payable to Campbell’s client trust account by May 10, 2006. Respondent received the letter by fax.

57. Ruiz's letter of May 4, 2006, terminated Respondent's employment.

58. Respondent provided no legal services of value to Ruiz and did not earn any portion of the advanced attorney fees and costs paid by Ruiz. At no time did Respondent refund any of the \$6,400 paid by Ruiz.

59. By failing to refund to Ruiz the \$6,400 in advanced attorney's fees and costs to represent her, Respondent wilfully failed to refund unearned fees.

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1 Respondent dated December 19, 2006 that required responses by January 8, 2007. The law firm
2 also requested that Respondent's spouse inform Respondent that the law firm requested that he
3 update his official membership address. Respondent received the message from his spouse.

4 68. On or about January 2, 2007, the law firm mailed a letter to Respondent at his home
5 address requesting that he update his official membership address. The letter attached the two
6 letters from the State Bar to Respondent dated December 19, 2006. Respondent received the
7 letter.

8 69. On or about January 3, 2007, Respondent changed his official membership address
9 from the San Bernardino address to the Corona address.

10 70. By failing to change his official membership address from the San Bernardino
11 address to the Corona address from on or about March 15, 2006 to on or about January 3, 2007,
12 Respondent wilfully failed to comply with the requirements of section 6002.1, which requires a
13 member of the State Bar to maintain his current office address and telephone number or, if no
14 office is maintained, the address to be used for State Bar purposes.

15 **COUNT TEN**

16 Case No. 06-O-15021
17 Business and Professions Code section 6068(i)
[Failure to Cooperate in State Bar investigation]

18 71. Respondent wilfully violated Business and Professions Code section 6068(i), by
19 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as
20 follows:

21 72. The allegations of paragraphs 3 through 16, 43, 56, and 62 through 69 are
22 incorporated by reference.

23 73. On or about April 6, 2007, the Investigator prepared a letter to Respondent regarding
24 the Ruiz matter. The letter was placed in a sealed envelope correctly addressed to the
25 Respondent at the Corona address. The envelope was properly mailed by first class mail,
26 postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of
27 business. The U.S. Postal Service did not return the envelope as undeliverable or for any other
28 reason. Respondent received the envelope containing the letter.

1 74. The Investigator's letter requested that Respondent respond in writing to specified
2 allegations of misconduct being investigated by the State Bar in the Ruiz matter by April 20,
3 2007.

4 75. Respondent did not respond to the Investigator's letter dated April 6, 2007, or
5 otherwise communicate with the Investigator.

6 76. On or about July 17, 2007, Respondent changed his official membership address
7 from the Corona address to the Home address.

8 77. On or about July 30, 2007, the Investigator prepared a letter to Respondent regarding
9 the Ruiz matter. The letter was placed in a sealed envelope correctly addressed to the
10 Respondent at the Home address. The envelope was properly mailed by certified mail, domestic
11 return receipt requested, and sent by facsimile to Respondent's official membership facsimile
12 number, *i.e.*, (419) 745-1488. Respondent received the facsimile and letter.

13 78. The Investigator's letter requested that Respondent respond in writing to specified
14 allegations of misconduct being investigated by the State Bar in the Ruiz matter by August 10,
15 2007.

16 79. On or about August 10, 2007, Respondent mailed a letter to the State Bar that did not
17 respond to the specified allegations of misconduct being investigated by the State Bar in the
18 Ruiz matter, but stated that he would provide a "response with pertinent records within fourteen
19 (14) days."

20 80. Respondent did not provide a further response or any records.

21 81. By not providing a written response to the allegations in the Ruiz matter or otherwise
22 cooperating in the investigation of the Ruiz matter, Respondent wilfully failed to cooperate and
23 participate in a disciplinary investigation.

24 **NOTICE - INACTIVE ENROLLMENT!**

25 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
26 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
27 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
28 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE

1 RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF
2 PROCEDURE OF THE STATE BAR OF CALIFORNIA.

3 **NOTICE - COST ASSESSMENT!**

4 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,
5 YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY
6 THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF
7 THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE
8 SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE
9 STATE BAR OF CALIFORNIA.

10 Respectfully submitted,

11 THE STATE BAR OF CALIFORNIA
12 OFFICE OF THE CHIEF TRIAL COUNSEL

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Dated: January 16, 2008

By: 

Charles T. Calix
Deputy Trial Counsel


[illegible]

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9848 5951 6749, at Los Angeles, on the date shown below, addressed to:

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

SIGNED: 
C.J. JOHNSON,
Declarant